IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 1 OF 2003

1. Dr. Fernando Jose de
Goveia Pinto Mascarenhas,

2. Mrs. Serena Mascarenhas,
both r/o Beach Nest Colony,
Bldg.,3, lst Floor,
Mira Mar, Panaji, Goa. ... Petitioners.

Versus

1. Chief Secretary, State
of Goa, Secetariat,
Panaji, Goa, and

2. Special Land Acquisition
Officer, (North),
Irrigation Department,
Duler, Mapusa, Goa. ... Respondents.

Shri J. Godinho, advocate for the petitioners.

Shri P. A. Kamat, Addl. Govt. Advocate for the respondents.

CORAM : F. I. REBELLO, J.

DATE : 25th July, 2003.

ORAL JUDGMENT

The land of the petitioners was acquired. The petitioners applied for enhancing compensation by way of reference under Section 18 of the Land Acquisition Act. Reference was made to the Reference Court which rejected the reference. Aggrieved, the petitioners came in appeal before this Court. This Court allowed the appeal and enhanced the compensation to Rs.60/-per sq. mt. from Rs.30/- per sq. mt., which was awarded by the Land Acquisition Officer.

2. The petitioners thereafter applied for

execution. While disposing of the application for execution, the Executing Court insofar as the interest on solatium is concerned observed as under:-

> "However, it appears that this Court gave liberty to the Decree-holders to revive the execution proceedings in case it was held by the Hon'ble Supreme Court that interest on solatium was payable to the Decree-holders."

This liberty was purportedly given as, at the relevant time the matter was before the Constitution Bench of the Apex Court. The Apex Court has now in **Sunder vs. Union of India, (2001) 7 SCC 211**, reiterated the position that solatium forms part of compensation under Section 23 and, consequently, the interest would be payable on the same. It is therefore contended on behalf of the petitioner by their learned counsel that they are entitled for interest on the solatium and, consequently, it is contended that the order rejecting the application for execution of the petitioners herein ought to be set aside.

On the other hand on behalf of the respondents their learned counsel relied on the judgment of the Apex Court in **Baburam vs. C. C. Jacob & Ors., AIR 1999 SC 1845,** to contend that the judgment in **Sunder vs. Union of India** (supra), would be prospective and cannot apply to awards or orders passed before the judgment was pronounced

in the case of **Sunder vs. Union of India** (supra).

3. In the instant case, firstly, when this Court allowed the appeal it awarded higher compensation which consequently would mean all other benefits which the petitioners herein would be entitled to. The petitioners thereafter moved for execution of the said Award in terms of the appeal decided in this Court. While disposing of the proceedings in execution, the executing court gave liberty to the petitioners to revive the application for execution in the event the Apex Court held that interest was payable on solatium. It is, therefore, clear that liberty was granted to the petitioners herein to so apply. Even otherwise, the order passed in appeal before this Court would not preclude the petitioners from claiming interest on solatium, if otherwise it was so possible. The matter of interest on solatium was referred to a Constitution Bench of the Apex Court in view of the conflicting judgments. The Apex Court after considering the law has held that solatium is a part of compensation and consequently, interest would be payable.

The only contention on behalf of the respondents is that the said judgment is prospective. The law on the subject is now clear. When the Apex Court decides on an issue of law it is a declaration of the law laid down on the date when the Act was enacted. However,

it is the Apex Court alone which in cases where it so holds apply the law prospectively. That is the position of law as set out in various judgments of the Apex Court, including the judgment relied upon by the respondents in the case of **Baburam vs. C. C. Jacob & Ors.** (supra). Where the Apex Court does not say that the judgment is to be applied prospectively, it must mean that it relates back to the date when the law was enacted. In the case of **Sunder vs. Union of India** (supra), the Apex Court has not said that the law is to be applied prospectively. In other words, that is the position of law on the date of the enactment by Parliament. The contention as raised, therefore on behalf of the respondents on that count will have to be rejected.

It was also contended on behalf of the respondents that in a large number of cases courts considering the law as it then stood did not grant interest on solatium. That is not the issue which is in issue in the present revision application as admittedly, in the instant case, liberty was granted to the petitioners herein to review the execution application in the event the Apex Court held that interest was payable on solatium. At any rate, we are not called upon to decide that issue in the present case.

4. Once that be the case, the The revision

application is allowed, the impugned Order is set aside and the matter is remanded to the executing court for considering the application of the petitioners herein and disposing the same according to law in the light of what has been stated in this judgment.

F.I. REBELLO, J.

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